

REMARKS

Claims 21-37 are pending in the application. Claims 21-36 are rejected. Claim 37 is objected to. Claims 38 and 39 are added herein. Claim 21 is herein amended. Claims 38-39 are herein added to the application. Applicants submit that no new matter is added.

Specification/Drawings

The Examiner noted that Applicants' previous correction of the drawings in the Response dated September 2, 2004 was an erroneous correction, because it was the specification and not the drawings that required correction. That is, the text on page 4 line 29 should have been changed to agree with the drawings, rather than the other way around. The Examiner indicated that both the specification and the drawings should both indicate InGaAs, rather than InGaP. Applicants submit herewith a replacement Fig. 2 and amend the specification to recite the correct compound.

Claim Rejections - 35 U.S.C. §102 and §103

Claims 21-36 are rejected under 35 U.S.C. §102(e) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Svilans '200.

The Examiner notes that Applicant has amended the claims to recite that the strained layer thicknesses satisfy the relationship $L_w = A \cdot \epsilon W + L$. However, the Examiner asserts that these claims do not include any constants for either " ϵW " (Applicants believe that the Examiner meant to refer to " A ") or L . As such, the Examiner concludes that the claimed relationship does not structurally limit the claims, nor distinguish the present invention from Svilans. The Examiner notes that claim 36 does further recite that $L = 1.3 \mu\text{m}$, but because no constant is

included for “ ϵW ” (“A”), the claim still reads on Svilans because a discrete value for the negative constant “ ϵW ” (“A”) could be calculated that would read on the structure of Svilans.

Applicants herein amend claim 21 to clarify the invention. Subsequently, Applicants respectfully disagree with the rejection, because not all of the claimed limitations are taught or suggested by the cited reference.

As Applicants noted in their response of September 2, 2004, the relationship $L_w = A \times \epsilon w + L$ has been derived from the experiments of the inventor of the present invention.

The Examiner has requested introduction of numerical limitations for constants “ ϵW ” (Applicants believe that the Examiner meant to refer to “A”) or L. Applicants respectfully believe that the Examiner’s request for introduction of the numerical limitation for ϵW (“A” as previously noted) or L as in the case of claim 37 may indicate that the Examiner is admitting the novelty of the foregoing relationship “ $L_w = A \times \epsilon w + L$ ” itself.

Applicants note that the foregoing relationship corresponding to FIG. 4 provides a criterion with regard to the morphology of crystal surface. Such a problem of crystal surface morphology is not addressed at all or even suggested in Svilans. Particularly, as-amended claim 21 recites that the coefficient A takes a negative value, while such limitation is impossible for Svilans. With regard to the feature of the coefficient A having a negative value in claim 21, not only FIG. 4 but also Equation (6) in page 13 of the specification provides support.

In view of the foregoing, Applicants herein amend claim 21 to clarify that there appears a flat surface in the layered structure when the total of the first thicknesses is smaller than the one given by the foregoing equation, and that there appears a rough surface when it is the opposite.

Furthermore, Applicants herein add new claims 38 and 39, the latter defining a range for the total of the first thicknesses and the compressive strain corresponding to FIG. 4, excluding

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the specific combination corresponding to Svilans. Applicants note that because Svilans is silent about the principle of the present invention as noted above, Applicants submit that there is shown no suggestion or motivation based on Svilans to expand the range thereof as set forth in new claim 39.

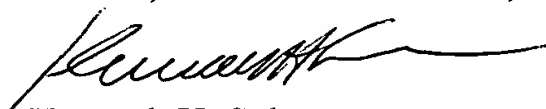
In view of the aforementioned amendments and accompanying remarks, Applicants submit that the claims, as herein amended, are in condition for allowance. Applicants request such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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Attachments: Corrected Figure 2

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AMENDMENTS TO THE DRAWINGS

The attached sheet of drawings includes changes to Fig. 2, returning it to its original condition prior to the amendment dated September 2, 2004.